

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Mr. George Kincaid)	
	See Attached List-----)	Davidson County
	Commercial Property)	
	Tax Year 2005 & 2006)	

INITIAL DECISION AND ORDER

Statement of the Case

For the purposes of writing this opinion I have consolidated these cases. For a list of the property descriptions and values, see the attached Exhibit.

These appeals were timely filed on September 15, 2005, on behalf of the property owner with the State Board of Equalization.

These matters were reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on August 16, 2006, at the Davidson County Property Assessor's Office; present at the hearing were Mr. George Kincaid, the taxpayer who represented himself and Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject properties consist of three (3) commercial duplex residences¹, located in Nashville, Tennessee.

The taxpayer contended that the subject properties should be valued according to his valuation totals, Mr. Kincaid's presentation shows that he put in a great deal of time and effort into the preparation. The presentations are very thorough and show that he went through a detailed analysis in coming up with his values and also shows he has a limited working knowledge of property appraisal techniques.

The assessor contends that the properties are assessed correctly and should be valued at the values previously assessed by the County Board of Equalization.

The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value,

¹ Mr. Kincaid's other properties are being resolved by expedited orders.

for purposes of sale between a willing seller and a willing buyer without consideration of speculative values”

Mr. George Kincaid made very compelling arguments regarding his contention of value on his properties.

These properties are all commercial residential duplexes that he has managed by a local management company². Mr. Kincaid prepared a notebook for each parcel made a detailed analysis and comparisons on his properties; however, there are fatal flaws in his analysis and approaches.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, he has the burden of proof. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981)

Mr. Kincaid used several approaches to market value³ in his analysis, paired (comparative) analysis, selling price per square foot and utilization of the capitalization rate.

In the paired analysis, the taxpayer's error was his failure to adjust for differences between the properties he analyzed. The only adjustment he made was for the presence or absence of central heat and air. Mr. Kincaid did not adjust for age/condition, construction/size, grade adjustments or time. Some of his examples had wide ranges, for example in the property at 3005 Oakland Avenue (Map 117-080-0; Parcel 047.00), the square footage fluctuated between 1392 square feet to 2868 square feet with no equalization and adjustment to the subject property.

As stated by the Board, the Market Value Theory requires that property “be appraised annually at full market value and **equalized by application of the appropriate appraisal ratio . . .**” *Id.* at 1.(emphasis added)

The Assessment Appeals Commission further elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is

² Mr. Kincaid purchased the properties when he resided in Tennessee but he was transferred to Carmel Indiana and now has a local firm take care of the day to day responsibilities of the properties and collect the rent.

³ Section 1 of each collective exhibit for each property, Taxpayer Exhibit #1.

certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment**. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects**. . . . (emphasis added) Final Decision and Order at 2.

See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then **adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable**. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001). *Andrew B. & Majorie S. Kjellin*, (Shelby County, 2005)

Since it is the taxpayer's burden to show that he is entitled to the requested relief, he must properly adjust his values to reflect and obtain accurate values. Mr. Kincaid stated, quite honestly, that he did not know how to fix values to some of the amenities/differences in the properties, e.g. fireplaces. Standard appraisal practices usually use guides from the Marshall/Swift manual, Mr. Kincaid's discussions with real estate people in the area will not yield accurate information as prices vary.

Since these are small residential duplexes with only two (2) units per building, the capitalization rate method was not helpful, admittedly by both parties the value was so low as to be irrelevant.

The price per square foot method used by the taxpayer was also not helpful in forming an opinion of value because of the varying sizes and prices using un-equalized values discussed earlier.

As to the last approach, use of the Gross Rent Multiplier, the taxpayer's calculations showed differing values from the assessors lead the administrative judge to draw the conclusion that it is possible that the taxpayer is not getting competitive market rent for his units.

The Assessor's exhibits (#2) used properly adjusted data to arrive at their figures and while they are slightly higher in most cases from the County Board's figures they do support the findings from the County Board.

Finally, the taxpayer argued that his figures should be used because it was the "fair" thing to do.

In a recent decision on the taxpayer's argument that the State Board could redress his grievance on "equitable" grounds, in a declaration by Administrative Judge Pete Loesch, when dealing with the same issue in *Theoda Dunn*, Henderson County, Tax Years 1999, 2000, 2001, 2002, 2003, 2004:

... as an administrative agency, the State Board's powers are limited to those delegated by the legislature. Thus, for example, in Trustees of Church of Christ (Obion County, Final Decision and Order, February 9, 1993), the Assessment Appeals Commission declined to backdate a church's claim of property tax exemption under T.C.A. § 67-5-212 on the following rationale:

There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however. *Id.* at p. 2. See also Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).

With respect to the issue of market value, the administrative judge finds that Mr. Kincaid simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2005, the relevant assessment date pursuant to T. C. A.

§ 67-5-504(a) nor was he able to overcome the presumption of correctness that attaches to the values affixed by the Davidson County Board of Equalization.⁴

ORDER

It is therefore ORDERED that the values and assessments adopted for tax years 2005 and 2006 for the subject properties be pursuant to the attached exhibit.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

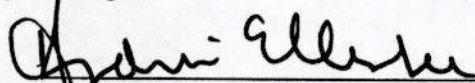
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED on this the 30th day of August 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Mr. George P. Kincaid
Jo Ann North, Property Assessor

⁴ Mr. Kincaid also failed to show how the properties marketability was affected by the repairs claimed for the structures.

Exhibit
Taxpayer Representative: Mr. George P. Kincaid

<u>Location</u>	<u>Parcel I.D.</u>	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
3003 Oakland	117-08-0 048.00	\$100,000	\$85,800	\$185,800	\$74,320
3305Oakland	117-08-0-047.00	100,000	74,800	174,800	69,920
1013 Estes Rd.	116-08-0-086.00	160,000	89,700	249,700	99,880